

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

FILED	
DATE: 5-10-2011	5:04 O'Clock P.M.
Sandra K Markham, Clerk	
BY: T. Brogdon	Deputy

DIVISION PRO TEM B

SANDRA K MARKHAM, CLERK

HON. WARREN R. DARROW

BY: T. Brogdon, Deputy Clerk

CASE NO. V1300CR201080049

DATE: May 10, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney

By Sheila Polk

Bill Hughes

(Via OnBase)

(Plaintiff)

(For Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly

(Via Electronic Mail)

(For Defendant)

(Defendant)

and

Luis Li/Brad Brian/Truc Do/Miriam Seifter

MUNGER TOLLES & OLSON LLP

(Via Electronic Mail)

(For Defendant *Pro Hac Vice*)

HEARING ON:

NATURE OF PROCEEDINGS

COURT REPORTER

JURY TRIAL -- DAY 40

Mina Hunt

START TIME: 8:19 a.m.

APPEARANCES:

Sheila Polk, Counsel for State

Bill Hughes, Co-Counsel for State

Detective Ross Diskin, Case Agent

James Arthur Ray, Defendant

Tom Kelly, Counsel for Defendant

Luis Li, *Pro Hac Vice* Counsel for Defendant

Truc Do, *Pro Hac Vice* Counsel for Defendant

Miriam Seifter, *Pro Hac Vice* Counsel for Defendant

The Court, Counsel, Detective Diskin, and the Defendant are present in the Courtroom.

The Court advises of three pending legal matters: length of the trial, 403 concerns, and the question of David Kent and Mr. Sundling's testimony.

Counsel for Plaintiff withdraws witness Doug Sundling and requests to reserve their right to recall him in rebuttal. Counsel for Plaintiff advises they will not call Steve Pace, Rick Ross and family members, and that they have narrowed their list down to 11.

Court and Counsel discuss length of Trial and witness testimony.

With regard to the 2009 participant witnesses, the Court advises it will be mindful of time and when testimony gets into cumulative posture. If it appears to be cumulative, the Court is considering setting time limits.

Court and Counsel discuss the issue of Dr. David Kent and his email to Counsel for Plaintiff. The State urges the Court to let Dr. David Kent testify. Counsel argue their positions regarding disclosure, witness testimony, causation issues, prior Terrazas hearing, and Brady issues. Counsel for Defendant urges the Court to recognize that this is late disclosure.

Court and Counsel discuss Rule 15.6 and prior 404B hearing.

Court and Counsel discuss testimony of the next witness, Dr. Dickson, the Haddow report and 21<sup>st</sup> Supplemental Disclosure. Counsel for Defendant advises the issue of Hypercapnia was addressed in the Court's prior ruling, and advises the Court has not addressed the line of questioning which they contend is that consistent with the information learned from the man named Rick Haddow, and requests the Court make that finding. Counsel for Defendant advises they were provided notice of what he was going to testify to, the signs and symptoms of heat related illnesses and submits that is now cumulative and requests the Court review Dr. Dickson's report.

The Court advises the Co2 information from the Haddow report is not the exculpatory information and should have been disclosed under the normal disclosure rules. With regard to discussing what should have been done, he can discuss causation and cannot discuss how this type of event should be conducted.

~~~Recess~~~

At 9:45 a.m. Court reconvenes, all previously appearing parties and the Jury is present.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Dr. Matthew Dickson is sworn and testifies.

Exhibits 167, 168, 208, 209, 257, and 384-395 are admitted into evidence pursuant to stipulation of Counsel.

The Jury is reminded of the admonition; Dr. Matthew Dickson is advised of the Rule for the exclusion of witnesses and excused for a recess.

~~~Recess~~~

At 11:17 a.m. Court reconvenes, all previously appearing parties are present. The Jury is not present.

Counsel for Defendant advises of their objection to Dr. Dickson's redacted reports submitted by Counsel for Plaintiff and marked as exhibits. Counsel argue their positions.

**IT IS ORDERED** sustaining the hearsay objection

Court and Counsel discuss expert testimony, prior events and 403 issues.

The Court advises what can be presented are the observations that have been testified to in Court.

~~~Recess~~~

At 11:34 a.m. Court reconvenes, all previously appearing parties and the Jury is present.

Dr. Matthew Dickson resumes testimony.

The Jury is reminded of the admonition; Dr. Matthew Dickson is reminded of the Rule for the exclusion of witnesses, excused for the noon recess and exits the Courtroom.

Court and Counsel discuss witness testimony, examination, causation issues and prior Court rulings.

~~~Noon Recess~~~

At 1:19 p.m. Court reconvenes, all previously appearing parties and the Jury is present.

Dr. Matthew Dickson resumes testimony.

Exhibit 1014 is offered and admitted into evidence without objection.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

The Jury is reminded of the admonition; Dr. Matthew Dickson is reminded of the Rule for the exclusion of witnesses and excused for a recess.

~~~Recess~~~

At 2:55 p.m. Court reconvenes, all previously appearing parties and the Jury is present.

Dr. Matthew Dickson resumes testimony.

The Jury is reminded of the admonition; Dr. Matthew Dickson is reminded of the Rule for the exclusion of witnesses and excused for a recess.

~~~Recess~~~

At 4:25 p.m. Court reconvenes, all previously appearing parties and the Jury is present.

Dr. Matthew Dickson resumes testimony.

The Jury is reminded of the admonition; Dr. Matthew Dickson is reminded of the Rule for the exclusion of witnesses and excused for the evening recess.

The Court stands adjourned for the day.

**END TIME: 5:04 p.m.**

cc Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Camp Verde Superior Court Building